HON'BLE SRI JUSTICE GHULAM MOHAMMED

AND

HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION No.17656 of 2007

ORDER: (Per Hon'ble Sri Justice Ghulam Mohammed)

This writ petition is filed challenging that the Special Court constituted under Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 has no jurisdiction to entertain L.G.C.No.32 of 2006.

The details necessary for deciding this writ petition is that the petitioner is an ex-serviceman and also served as President of the Defence Housing Cooperative Society Limited, Sainikpuri, Secunderabad, for the period 03-09-2000 to 02-09-2005. The third respondent was the Secretary of the society during the same period. The society had allotted plots to its members and the allottees have built the respective houses. While so, the complaint of the petitioner is that though 2nd respondent is an ex-serviceman and is not a member of the above society, he had purchased a plot from a member of the society, without obtaining the prior approval of the Managing Committee of the Society as stipulated in sub-clause (13) of Bye-law No.42. The second respondent herein filed LGC No.32 of 2006 before Special Court alleging inter alia that illegal transactions had taken place contrary to Society bye-laws during the tenure of the petitioner and respondents 3 and 4 and they have grabbed and sold the society plots to third parties.

Heard learned counsel for the petitioner, Sri O.Yella Reddy party-in-person and perused the material available on record.

Learned counsel for the petitioner contended that the second respondent is not a member of the society and he has no locus to file land grabbing case and that he is a land grabber, but the Special Court passed the order dated 01-08-2007 taking cognizance of the

case without adverting to the averments in counter, therefore the Special Court ought not to have taken the case on file. Learned counsel had drawn our attention to para-51 of the Full Bench decision of this Court in MOHD. SIDDIQ ALI KHAN Vs. SHAHSUN FINANCE LIMITED, CHENNAI [1] to the effect that the Special Court can reject the application if prima facie found that the application is frivolous or vexatious.

Learned counsel for the petitioner also contended that other members of the society numbering 1,500 have not raised any objection except the second respondent, who is not a member of the Society.

Sri O.Yella Reddy, party-in-person has drawn our attention to the Full Bench judgment of this Court and contended that mere allegation is sufficient to take cognizance of the case and the Special Court has rightly taken the case on file. He relied upon the decision of the Division Bench of this Court in GUSANI STEELS (PVT) LTD Vs. SHANTHA BAI [2].

Having considered the submissions made on either side and on perusal of the record, it is clear from the order dated 01-8-2007 that the Special Court did not advert to the legal pleas and averments made in the counter including the contentions that the applicant is not an ex-serviceman and not a member of the Society, that he has no locus standi to file the case, and that the Special Court has no jurisdiction to try the case and also other relevant plea taken by the parties that go to the root of the matter. All these aspects have not been adverted to in the order and the case was taken on file. In the facts and circumstances, we are not inclined to express any opinion on the merits of the case, but set aside the order dated 01-08-2007 and remand the matter to the first respondent - Special Court for fresh disposal on the above lines and in accordance with law after giving

opportunity to both the parties.

The writ petition is accordingly allowed. No order as to costs.

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GHULAM MOHAMMED, J.

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D.APPA RAO, J.

22-11-2007

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[1] 2005 (2) ALD 675 (FB)

[2] 2000 (2) An.W.R. 84 (D.B.)